

EXHIBIT G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MUSA HOXHAJ, ABDOU EL SHABEINY, AND
RICARDO CORDERO,

Plaintiffs,

-against-

Case No.
21 Civ. 06486
(LJL)

MICHAEL CETTA, INC., MICHAEL CETTA AND
STEVEN CETTA,

Defendants.

-----X

May 23, 2022
10:11 a.m.

DEPOSITION via remote videoconference of
ABDOU EL SHABEINY, the Plaintiff in the
above-entitled action taken by the
Defendants and held before Binita
Shrestha, a Stenographic Court Reporter
and Notary Public within and for the
State of New York.

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2 A P P E A R A N C E S:

3

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20

21

22 Also Present:

23 Musa Hoxhaj, Plaintiff

24 Ricardo Cordero, Plaintiff

25

1 A. EL SHABEINY

2 us the managers.

3 Q. You and Musa had the same
4 position regardless of what you called
5 it, right?

6 A. What do you mean? Ricardo was
7 us too. He was working with us as the
8 same.

9 Q. That's another question. I'm
10 asking specifically about Musa right now.

11 A. Yes.

12 Q. Musa and you both had the same
13 position, correct?

14 A. Yeah. We're working in the
15 front desk and dining room.

16 Q. And Ricardo Cordero, who is he?

17 A. He's the same. He working with
18 us at front desk, and dining room, and
19 private room.

20 Q. Do you remember whose idea it
21 was to file this lawsuit?

22 A. I'm sorry. I couldn't hear you,
23 Adam. Say it again.

24 Q. Do you remember whose idea it
25 was to file this lawsuit?

1 A. EL SHABEINY

2 A. No. After they opened back the
3 restaurant again, and I called them. I
4 said I'm ready to come back. They told
5 me we don't need you.

6 Q. When did that conversation take
7 place?

8 A. Like when they opened. I don't
9 remember exactly the date. But when they
10 opened Sparks, I called, and I said I'm
11 ready, and I think I sent a letter to
12 Susan in her e-mail.

13 I said I'm antibody, COVID-19,
14 because we had conversation, and I
15 thought I have pneumonia because I don't
16 know I have Corona. When I found I'm
17 already antibody, I'm okay, I'm ready, I
18 told her I got the letter from the
19 hospital, I'm clean, I'm ready, and I'm
20 ready to work.

21 Q. Do you remember what they said
22 to you after you said I'm ready to come
23 back to work?

24 A. She told me, "No. We don't need
25 you right now."

1 A. EL SHABEINY

2 Q. Do you remember why they didn't
3 need you?

4 A. Why?

5 Q. Yes.

6 A. I don't know. You can ask her
7 why she answered me like this.

8 Q. When you say her, you're
9 referring to Susan Edelstein?

10 A. Yeah. That's her answer. She
11 said -- I called Sal. I told him after
12 25 years, I got this answer. He said,
13 "I'm sorry. I have nothing to do with
14 this."

15 Q. And when you say Sal, you
16 mean --

17 A. Shailesh.

18 Q. -- Shailesh Desai?

19 A. Shailesh Desai, the manager of
20 the office.

21 Q. Mr. El Shabeiny, do you know who
22 they brought back at that time?

23 A. I don't remember the names, like
24 six guys and one guy in the front. They
25 put one guy in the front.

1 A. EL SHABEINY

2 to refer to Steven Cetta as Steve, okay?

3 A. Okay.

4 Q. How old is Steve?

5 A. 59.

6 Q. How long have you known Michael
7 Cetta?

8 A. Since I worked there.

9 Q. When did you start work?

10 A. '95.

11 Q. At that time, were you hired as
12 a server?

13 A. Correct.

14 Q. When were you moved from server
15 to the front-of-the-house manager
16 position?

17 A. I don't remember. It's like two
18 years, a year and a half, something like
19 that.

20 Q. When you say two years, you mean
21 two years after you had gotten hired?

22 A. Yes, correct.

23 Q. So somewhere around 1997,
24 around?

25 A. Correct. I was working

1 A. EL SHABEINY

2 A. No.

3 Q. What is your date of birth?

4 A. May 8th, '63.

5 Q. For the record, that makes you
6 how old?

7 A. 59.

8 Q. The same age as Mr. Cetta?

9 A. That's why I remember his age.
10 When you asked me, that's why I say right
11 away, 59.

12 Q. What's the highest level of
13 education that you've achieved?

14 A. Bachelor's degree in accounting
15 from Egypt.

16 Q. Were you born in Egypt?

17 A. Correct.

18 Q. When did you immigrate to the
19 United States?

20 A. 19 -- I think -- 86.

21 Q. Do you hold any professional
22 licenses or certifications?

23 A. No. From here, no.

24 Q. In Egypt?

25 A. Bachelor's degree.

1 A. EL SHABEINY

2 A. Say it again, Adam. I don't
3 understand.

4 Q. You were employed until March of
5 2020, correct?

6 A. Correct, correct.

7 Q. Do you remember the reason that
8 you stopped working at Sparks?

9 A. I stopped working?

10 Q. Yes. Do you remember the
11 reason?

12 A. I don't know. They don't want
13 to take me back, and it's got involved
14 with many things.

15 Q. In March of 2020, did the
16 restaurant close?

17 A. Yeah, for the COVID.

18 Q. For COVID?

19 A. Yeah.

20 Q. That's the reason the restaurant
21 closed, correct?

22 A. Correct.

23 Q. And that's the reason that you
24 stopped working in March of 2020. It was
25 because of COVID, right?

1 A. EL SHABEINY

2 A. Yeah.

3 Q. Do you remember hearing that you
4 were furloughed?

5 A. I don't understand by
6 furloughed.

7 Q. Do you remember hearing that you
8 were being laid off because of COVID?

9 A. Everybody laid off in the
10 restaurant. Susan, she called us. She
11 said it's the last week. Shailesh with
12 the phone. And they said, "We're going
13 to close, guys. And we're going to hire
14 you back when we open by seniority."

15 That's the title exactly in the
16 conversation.

17 Q. Mr. El Shabeiny, I'm showing you
18 what's been marked as Defendant's Exhibit

19 B. Can you see this on your screen?

20 Can you see this on your screen?

21 A. I see it.

22 Q. Take a minute to take a look at
23 it.

24 A. Yes, Adam, I read it kind of.

25 Q. Do you remember seeing this

1 A. EL SHABEINY

2 did Sparks pay for that food?

3 A. I don't hear what you said.

4 Q. Did you pay for that food, or
5 did Sparks pay for that food?

6 A. Did I pay for this food? No, I
7 don't pay for that food, but I open a
8 check for inventory.

9 Q. Were you ever involved in
10 interviewing prospective servers?

11 A. No.

12 Q. Did you ever look at a resume or
13 were asked to evaluate a candidate?

14 A. No.

15 Q. Did you ever write up any
16 servers for performance or conduct
17 issues?

18 A. No. Maybe I did it once or
19 twice with Susan or Steve. They said
20 like put your signature. I put my
21 signature. But I don't write something
22 specific, you know.

23 Q. If a server had a problem with a
24 customer, would they come to you, the
25 managers?

1 A. EL SHABEINY

2 A. Yeah, they come to see me, and
3 they tell me.

4 Q. And what would you do in that
5 situation?

6 A. It depends on what the problem
7 is. I call Steve downstairs or I go to
8 the cook and show him the food. Should I
9 reject it? Should I do this?

10 If they say the steak is not
11 good, I have to show it to the cook
12 because the cook he makes the decision
13 for this, it's good or not good.

14 Q. Were you able to assign a waiter
15 to a different section or table?

16 A. I'm sorry. Say it again.

17 Q. Were you ever able to assign a
18 waiter to a different section or a
19 different table?

20 A. It's rotated.

21 Q. What do you mean it's rotated?

22 A. It means the schedule is
23 rotation, the waiters. If you work here
24 tomorrow, you work there tomorrow. It's
25 something being assigned for this.

1 A. EL SHABEINY

2 to work. Is that your testimony?

3 A. Yes, correct, sir.

4 Q. Who would take that information
5 and put it into the schedule?

6 A. Musa.

7 Q. Did you have any role in
8 scheduling?

9 A. No. I just like replace the
10 stations.

11 Q. Did you ever have any role in
12 assigning side jobs?

13 A. Yes.

14 Q. How did you assign side jobs?

15 A. Whoever comes first, he take
16 whatever said job first, he choose. Like
17 you come first. You want to do napkin,
18 do napkin. You want to come do ice, do
19 ice. You want to set the station, do
20 station.

21 You have early-early,
22 early-late, late-late in the schedule.
23 Late-late is not going to do side job.
24 Early-late is going to come 5 o'clock.
25 Dinner started already. He's not going

1 A. EL SHABEINY

2 A. I don't know when, how, for how
3 long. That's before '95. I don't know.

4 Q. Do you know how old Mr. Moran
5 is?

6 A. Yeah. He's over 60.

7 Q. He's older than you are?

8 A. I believe so, a couple of years.

9 Q. Do you know if Mr. Moran has any
10 particular religious beliefs?

11 A. I don't know what he believes
12 in.

13 Q. Do you know if he's Muslim?

14 A. I don't know what he believes
15 in. We never talk about religion. I
16 don't know. Could be he's Muslim because
17 he born as a Muslim, yeah, by the name.

18 Q. Do you know if he's a practicing
19 Muslim?

20 A. I never saw him practice.

21 Q. Do you know if he ever prayed at
22 work, for instance?

23 A. No, I never saw him.

24 Q. When you say no, you mean you
25 don't know?

1 A. EL SHABEINY

2 A. No. It means no.

3 MR. O'NEILL: Objection.

4 THE WITNESS: It means no. I
5 never saw him practice in Sparks.

6 BY MR. COLLYER:

7 Q. We've talked about Octavio Perez
8 several times today, right?

9 MR. O'NEILL: Objection to
10 form.

11 Q. We've referred to Octavio
12 several times today, right?

13 A. I'm sorry, Adam. I don't
14 understand what you're saying.

15 Q. Do you see Octavio Perez's name
16 here --

17 A. Yes, I do.

18 Q. -- on Exhibit Q?

19 A. Yes, I do.

20 Q. Mr. Perez was also a manager,
21 correct?

22 A. He has the same title as us.

23 Q. Same title as you?

24 A. Yeah. Call it manager, captain,
25 maître d', host.

1 A. EL SHABEINY

2 Q. Do you know how old Mr. Perez
3 was at the time that the restaurant
4 closed?

5 A. I don't know exactly how old he
6 is.

7 Q. Do you know if he's older than
8 you or younger than you?

9 A. He's older than me. Do you
10 know, by the way, he passed away. He
11 died.

12 Q. I do know that.

13 A. Okay. That's why I don't want
14 to talk too much about him. It's just
15 like let him sleep in peace.

16 Q. I appreciate that, but there are
17 some conversations we have had to have
18 about him.

19 A. Okay, go ahead.

20 Q. You said Mr. Perez is older than
21 you?

22 A. I don't know exactly. Maybe
23 he's the same age, one year less, two
24 years up. Average, same age, around the
25 age.

1 A. EL SHABEINY

2 Q. Right. And do you know the
3 reason that this document was created?

4 A. I don't know.

5 Q. Do you know whether this
6 document was created after the lawsuit
7 that was filed against you and Sparks?

8 A. Could be. They start to do a
9 lot of things for this, yeah.

10 Q. Were you aware that Sparks had a
11 24-hour hotline to report workplace
12 complaints or discrimination?

13 A. No.

14 Q. Did you ever complain about age
15 discrimination?

16 A. No.

17 Q. Did you ever call the 24-hour
18 hotline to complain about it?

19 A. No.

20 Q. You also allege that you were
21 discriminated against on the basis of
22 your religion, right?

23 A. Yes.

24 Q. What religion do you practice?

25 A. I'm Muslim.

1 A. EL SHABEINY

2 I'm the one he ask tell them why you do
3 -- you ask them to tell them.

4 And every time he got upset, he
5 seen the guys praying, he call me on the
6 phone and cursing. "How long this
7 religion, this prayer takes? Why they
8 stay longer? Why somebody is more than
9 the other one?"

10 And it's like this, you know,
11 all the time, day by day, day by day.
12 And I feel he enjoys to bother me with
13 this every time he's upset about religion
14 or about Muslims. He knows I'm Muslim
15 like them. Why cursing the religion, my
16 religion all the time?

17 Q. Did you ever pray at work?

18 A. Never.

19 Q. Did Steve or Mike take any
20 action against you because of your
21 religion?

22 MR. O'NEILL: Objection to
23 form.

24 MR. COLLYER: You can respond.

25 A. No. Like what I see, he's

1 A. EL SHABEINY

2 cursing all the time about Muslim people
3 or when they pray.

4 Q. Who were the waiters that Steve
5 would criticize?

6 A. I couldn't hear. Your voice is
7 cutting off.

8 Q. Who were the waiters that Steve
9 would criticize for taking time to pray?

10 A. Musa, he pray. Jamie, Rashid,
11 and another one, I don't remember. Four,
12 five guys, they are praying, four guys.
13 Mustafa. I don't remember. I think
14 another one, but I don't remember.

15 Q. Were you ever instructed to
16 discipline any of these individuals
17 because they prayed at work?

18 A. No. I have nothing to do with
19 this, you know.

20 Q. Was Steve aware that you're
21 Muslim?

22 A. I'm sorry?

23 Q. Was Steve aware that you were
24 Muslim?

25 A. Yeah.

1 A. EL SHABEINY

2 Q. You had been employed since the
3 mid-90s at Sparks, right?

4 A. Correct.

5 Q. And according to the complaint,
6 Steve was responsible for the day-to-day
7 operations of the restaurant, right?

8 A. Mm-hmm, correct.

9 Q. And Mike made all executive
10 decisions about the operations of the
11 restaurant, right?

12 A. Yes, yes.

13 Q. They could have fired you at any
14 time, right?

15 A. Absolutely, yes.

16 Q. Did they ever fire you because
17 of your religion?

18 A. No.

19 Q. They promoted you, right?

20 A. I don't understand. They fired
21 me before? That's what you said.

22 Q. Did they fire you for your
23 religion?

24 A. I don't know what they fire me
25 for. I told you for a lot of reasons.

1 A. EL SHABEINY

2 Q. What other acts of religious
3 discrimination are you alleging?

4 A. I don't remember. That's it.
5 That's all I remember now. The food.

6 Q. What about the food?

7 A. The cook, he refused to -- like
8 Ramadan, when we're fasting, he refused
9 to heat for us the food. The food has
10 been cooking since 2 o'clock afternoon in
11 the night in the side area. It means the
12 food start to smell or stink. Eight
13 hours outside.

14 And that's why one day, we asked
15 him to heat it. He says, "No, I'm not
16 going to it heat nothing."

17 And Steve, he know this. He
18 doesn't do nothing until his father he
19 came, and we called him. He suspended
20 the cook for two weeks or three weeks or
21 something like that.

22 Q. What's the name of the cook?

23 A. I forgot his last name. First
24 name, Ernesto.

25 Q. Was Ernesto your supervisor?

1 A. EL SHABEINY

2 A. He's my supervisor?

3 Q. Yeah.

4 A. He's the cook. He's the one
5 running the kitchen.

6 Q. Did he have any supervisory
7 authority over you?

8 A. Steve or Mike.

9 Q. Could Ernesto have disciplined
10 you or fired you?

11 A. No. He's the kitchen guy. He
12 has nothing to do with the dining room.
13 He's running the kitchen. He's the
14 supervisor of the kitchen.

15 Q. When did this incident with the
16 food happened?

17 A. When what?

18 Q. When did this incident with the
19 food happened?

20 A. I don't remember.

21 Q. Five years ago?

22 A. Could be.

23 MR. O'NEILL: Objection to
24 form.

25 A. Could be. I don't remember.

1 A. EL SHABEINY

2 Q. Four years ago?

3 A. I don't remember, Adam.

4 Q. Do you remember if it was before
5 or after the staff walkout in December of
6 2014?

7 A. I don't remember, Adam. All I
8 remember, the waiters, they wrote a
9 petition. I think Sayed was one of them.
10 He was a waiter during this time. He
11 doesn't wear a tuxedo, and he's the one
12 that complained, and the complaint when
13 to Mike Cetta downstairs, and he was
14 suspended right away.

15 Q. You're saying this was when
16 Sayed was a waiter, a server?

17 A. Yeah. And I complained, and
18 Musa --

19 MR. O'NEILL: Wait for a
20 question.

21 THE WITNESS: Okay.

22 BY MR. COLLYER:

23 Q. Other than the complaint about
24 the food, did you ever complain about
25 religious discrimination?

1 A. EL SHABEINY

2 A. To who?

3 Q. Did you ever call the 24-hour
4 hotline?

5 A. No.

6 Q. Did you ever complain to Susan
7 or Shailesh?

8 A. No.

9 Q. Did you ever file a claim with
10 the City Commission on Human Rights or
11 the State Division of Human Rights?

12 A. No.

13 Q. Did you ever file a complaint
14 about the Equal Employment Opportunity
15 Commission?

16 A. No.

17 Q. Are there any other actions that
18 you believe were taken based on your
19 religion than the ones we talked about?

20 A. I don't understand the question.

21 Q. Other than the conversations we
22 have had about the food, about Steve's
23 comments, are there any other actions
24 that you believe were taken against youby
25 Sparks because of your religion?